

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLO RODICO Y SERRANO, VICTORIO RODICO & JOHN DOE, ACCUSED. VICTORIO RODICO, APPELLANT.

G.R. No. 107101. October 16, 1995

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

For the Christmas-day killing of one Dominador delos Santos, herein accused-appellant Victorio Rodico, together with Marlo Rodico and a certain John Doe, were charged on April 24, 1991, before the Regional Trial Court, First Judicial Region, Branch 52, Tayug, Pangasinan, in an Information which alleges:

"That on or about the 25th day of December, 1990, in the evening, at Barangay Poblacion, municipality of Tayug, province of Pangasinan, New Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with VICTORIO RODICO alias 'Toyong' who is still at-large and JOHN DOE whose identity have (sic) not been established, conspiring, confederating and helping one another, with intent to kill and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously stab one DOMINADOR DELOS SANTOS y ESCANO, inflicting upon him an injury, to wit:

- stab wound, penetrating, 2.5 cm RUQ, abdomen perforating and lacerating the liver, (R) lobe from its superior surface thru and thru its inferior surface and into the subcutaneous (sic) tissue at the lower back (hepatic vessels damaged).

which cause (sic) the death of DOMINADOR E. DELOS SANTOS, as a consequence, to the damage and prejudice of the heirs of the said DOMINADOR E. DELOS SANTOS.

Contrary to Article 248 of the Revised Penal Code."[1]

Appellant and Marlo Rodico pleaded not guilty upon arraignment.[2]

After a joint trial, the court a quo rendered a Decision dated May 15, 1992, convicting herein appellant and Marlo Rodico of the crime charged. The dispositive portion of the said decision reads:

"WHEREFORE, based on the foregoing premises, both accused Marlo Rodico and Victorio Rodico are hereby found GUILTY beyond reasonable doubt and the Court sentences them (sic) the penalty of Reclusion Perpetua and ordering them to pay jointly and solidarily the heirs of the deceased the sum of Fifty Thousand Pesos (P50,000.00), as compensatory damages plus Twenty Thousand Pesos (P20,000.00) moral damages and finally, pay the heirs the sum of Nine Thousand One Hundred Pesos (P9,100.00) as actual funeral expenses.

Pursuant to the third rule as provided under Administrative Circular No. 2092, dated 20 January 1992 of the Supreme Court, both accused are hereby committed to the National Penitentiary thru the Provincial Warden, Lingayen, Pangasinan, pending appeal and/or review of the decision by said court. Bailbond cancelled, and released to bondsmen upon receipt hereof.

SO ORDERED."[3]

Appellant now assails the Trial Court's verdict to which he assigns the following errors:

I

THE COURT BELOW ERRED IN CONCLUDING THAT THE PROSECUTION HAD PROVED BEYOND REASONABLE DOUBT THE GUILT OF THE APPELLANT VICTORIO RODICO.

II

THE COURT BELOW ERRED IN CONCLUDING THAT THE PROSECUTION HAD PROVED CONSPIRACY TO JUSTIFY CONVICTION OF APPELLANT VICTORIO RODICO.

III

THE COURT BELOW ERRED IN FINDING APPELLANT VICTORIO RODICO GUILTY OF THE OFFENSE CHARGED AND IN NOT ACQUITTING HIM ON GROUNDS OF NOTCHES OF PROOF BEYOND REASONABLE DOUBT.

The case for the prosecution is founded, principally, on the testimonies of witnesses Nilda Tuviera, Erna dela Rosa, Teresita delos Santos, Pat. Alexander Sevidal, and Dr. Eufrazio Jovellanos, Jr., as well as the documentary exhibits hereafter adverted to. The first three witnesses named having testified during the presentation of evidence against accused Marlo Rodico, appellant being at the time at large, the prosecution adopted their testimonies, as well as the documentary Exhibits "A" to "H", except "F", and their submarkings, inclusive,[4] to prove its case against the latter.

Pat. Alexander N. Sevidal declared on the stand that on December 25, 1990, at about 7:15 p.m., he had, in response to a telephone call, gone to the Tayug Eastern District Hospital to interview the victim of a stabbing incident, Dominador delos Santos, and that the latter gave an ante mortem statement thumbmarked with his own blood,[5] to the effect that he had been "* * * stabbed by still unknown person a resident of Caipilan, Barangay Agno, Tayug, Pangasinan who is wearing yellow colored sleeveless T-shirt (boxer) and was in the company of two persons of same place, one of whom is the son of a certain Boy Serrano and the other is the son of a man with a motor." [6] The next day, December 26, 1990, Sevidal, on suspicion that Marlo Rodico was delos Santos' assailant, brought the latter from his house to the police station for custodial investigation.[7] Sevidal took the sworn statement of Marlo who denied participation in the stabbing and instead pointed to appellant as the assailant of delos Santos.[8] On January 3, 1991, Sevidal also took the sworn statement of Erna dela Rosa implicating Marlo Rodico and two other unknown persons as the assailants of the victim.[9]

Erna dela Rosa, a 12-year-old student, testified that on December 25, 1990 at about 7:15 p.m., while she, and five other children, namely: Bonnie Bautista, Beth Bautista, Nilda Tuviera, Bandiong Tuviera, and Allan dela Rosa, were inside the premises of the Nazareth Church on Rizal Street to watch a game of race of chairs (lumba ti tugaw), her attention was drawn to a commotion in the street outside; she saw Marlo Rodico in the act of stabbing Dominador delos Santos who was lying on the ground, face up, once in the stomach, while two (2) unknown persons held Dominador by the hands and feet.[10] She stated that she saw this from only about three (3) to four (4) meters away[11] and it was "too bright;"[12] and that after thus ganging-up on delos Santos, the three assailants ran away towards the elementary school.[13]

Nilda Tuviera, a 9-year-old Grade III pupil, corroborated Erna dela Rosa's testimony. Nilda declared that on December 25, 1990 at about 7:15 p.m., while she and Beth Bautista, Bonnie Bautista, Allan dela Rosa, and Erna dela Rosa were inside the premises of the Nazareth Church in front of Rizal Street waiting to see the games of "breaking the pot" and "race of chairs," she saw Marlo Rodico stab the prone Dominador delos Santos once in the abdomen;[14] that Marlo Rodico had two (2) companions, one of whom held Dominador's hands and the other his

feet;[15] and that when the three (3) assailants ran away towards the school, the victim stood up, threw stones at his assailants, and then fell down.[16] Answering a question from the trial court, Nilda testified that she was five (5) to six (6) meters away from where the stabbing took place and that the street was illuminated by a fluorescent lamp on an electric post nearby, which enabled her to recognize Marlo Rodico as one of the assailants.[17]

Teresita delos Santos, daughter of the victim, Dominador delos Santos, testified that she heard her father's ante mortem statement which Pat. Sevidal took down; that before her father expired, he asked her to fight for his rights and whispered to her that he was about to die;[18] and that the expenses incurred for the medicine and funeral expenses of her father amounted to some Nine Thousand Pesos (P9,000.00).[19]

Dr. Eufracio Jovellanos, Jr. testified that he performed the autopsy on the remains of Dominador delos Santos, and made the following findings:

"Stab wound penetrating 2.5 cm. RUQ, abdomen perforating and lacerating the liver, (R) lobe from its superior surface thru and thru its inferior surface and into the subcutaneous tissue at the lower back (hepatic vessels damaged)."[20]

According to the doctor, the wound sustained by the victim was of a kind from which he might not have survived for more than thirty (30) minutes to one (1) hour,[21] and before Dominador delos Santos died, he gave an ante mortem statement to the police.[22]

After appellant Victorio Rodico was taken into custody and then arraigned,[23] the prosecution recalled witnesses Nilda Tuviera and Erna dela Rosa to testify as to appellant's participation in the commission of the crime.

Nilda Tuviera declared that she did not know the name, but could recognize the face, of the person who held the feet of Dominador delos Santos when he was stabbed by Marlo Rodico;[24] and she identified the appellant as that person.[25]

Erna dela Rosa testified to the same effect, also identifying Victorio Rodico as the person who held the feet of the victim.[26] She also stated that she saw the appellant for the first time during the stabbing incident, and the second and third time in court.[27]

The defense consists of little more than bare denial, with the two accused accusing each other of the fatal stabbing of Dominador delos Santos.

Marlo Rodico, lone witness in his own defense, testified that at about 6 o'clock p.m. on December 25, 1990, he, and a group that included Tony Geronimo, Zaldy Geronimo, were in the house of Felicidad Padillo; that he left at about 6:45 p.m., ahead of the rest; that while he and another person, Daniel Asuncion, were walking towards the plaza, he saw appellant Victorio Rodico grappling with Dominador delos Santos at Rizal Street near the Nazareth Church; and that afterwards, he and Daniel Asuncion went home.[28]

On cross-examination, Marlo stated that when appellant Victorio Rodico (who is his first degree cousin) and Dominador delos Santos grappled, they rolled on the ground, then Dominador shouted for help and Victorio ran away. Scared about what they had seen, he and Daniel Asuncion ran away and went home.[29] He was not able to report the incident to the police because at about 2:00 a.m. the next day he was arrested by a policeman.[30]

Appellant Victorio Rodico was also his own and only witness. He stated that on December 25, 1990 at about 6:00 to 7:00 p.m., he, Marlo Rodico, Daniel Asuncion, Zaldy Geronimo and Tony Geronimo, were in the house of Felicidad Padillo. Later, Marlo Rodico invited him (Victorio) and Daniel Asuncion for a stroll at Rizal Street. While they were walking along said street, a man riding on a bicycle appeared. Marlo Rodico ran to the man and stabbed him once in the stomach.[31] Stunned at what they had witnessed, appellant and Daniel Asuncion ran

towards the elementary school, while Marlo followed them.[32] Marlo Rodico threatened appellant, "Don't reveal cousin, otherwise, you will be next." [33] Subsequently, appellant went home and never told anyone about what he had seen because he was afraid of Marlo Rodico.[34]

On cross-examination, appellant stuck to his story, stating that while he, Marlo, and Daniel Asuncion were walking along Rizal Street, a man riding on a bicycle came towards them from the opposite direction. When said man was already at a distance of six (6) meters from them, Marlo Rodico ran towards the rider and stabbed him,[35] afterwards identifying his victim to appellant as Dominador delos Santos.[36] He confirmed that he had kept silent about the incident even to his wife and lawyer out of fear of Marlo Rodico.[37]

To a question of the trial judge, appellant replied that when he was informed that Marlo Rodico had accused him of the stabbing, he immediately surrendered to the police.[38] He was unaware that a warrant for his arrest had been issued on January 4, 1991, and that the police authorities were looking for him in order to arrest him, and that before he came to know that Marlo Rodico had implicated him as the assailant, he had been staying in his barrio, Caipilan, Tayug.[39]

Appellant advances the following arguments in support of his contention that contrary to the finding of the trial court, the prosecution had failed to establish his guilt beyond reasonable doubt:

1. he (appellant) had not been identified by the two eyewitnesses, Erna dela Rosa and Nilda Tuviera, during their first direct examinations;
2. the ante-mortem statement of the deceased Dominador delos Santos does not mention him by name;
3. The credibility and competency of the above-mentioned two (2) eyewitnesses are doubtful;
4. The prosecution failed to prove motive on his part.[40]

The arguments are without merit.

True, the two prosecution eyewitnesses, Erna dela Rosa and Nilda Tuviera, did not mention appellant's name when they first deposed on their direct examination; however, upon being recalled to testify when appellant was already in custody, both positively identified him as the one who held the victim by the feet while the latter was being stabbed by Marlo Rodico.[41] Given the two girls un rebutted claim that they witnessed what had happened from only some three (3) to six (6) meters away and under a bright light,[42] the Court sees no reason to doubt their common identification of appellant and their account of his participation in the killing of delos Santos.

The omission from the ante mortem statement of Dominador delos Santos of mention of appellant's name in nowise affects the credibility of the evidence of his part in the crime charged, he having been positively identified by two eyewitnesses.

Appellant attempts to put in issue the credibility and competency of the two eyewitnesses. As to credibility of witnesses, it is well established that the findings of fact of the trial court thereon should not be disturbed on appeal said court being in a better position to decide the question, from having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value which, if considered, could affect the result of the case.[43] The present case, gives no reason to depart from this rule, the more so that the court a quo found the narration of the adolescent eyewitnesses to be "**** clear, straightforward and convincing. * * *"[44]

Similarly, a witness is not deemed incompetent to give testimony simply because he or she is of tender age.[45] This Court has repeatedly held that the testimony of a minor or minors of tender age will suffice to convict a person accused of a crime so long as it is otherwise credible.[46] Indeed, it has even been held that the testimony

of children of sound mind is likely to be more correct and truthful than that of older persons so that once established that they have fully understood the character and nature of an oath, their testimony should be given full faith and credence.[47]

As to the alleged absence of proof of motive, let it simply be stated that by settled rule, it offers no obstacle to conviction where, as in this case, the evidence fully establishes the identity of the offender.[48]

The second assigned error disputes the trial court's finding of conspiracy to justify appellant's conviction. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[49]

In the case at bar, although there is no proof as to the previous agreement by the three (3) assailants to commit the crime charged, nevertheless said conspiracy is evident from the manner of its perpetration.[50] The prosecution evidence clearly established that the victim Dominador delos Santos was stabbed once in the stomach by Marlo Rodico while the former was being held down on the ground by appellant Victorio Rodico, who held the victim's feet and by another unknown assailant, who held the victim's hands. These concerted acts sufficiently demonstrate a common purpose to kill the victim.[51]

It is firm rule that where conspiracy is shown to exist, all the conspirators are liable as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one conspirator is the act of all.[52] Although appellant merely held the the victim by the feet without inflicting any injury, having done this clearly in concert with the other two attackers and to facilitate the commission of the crime, he is liable as a co-principal.

The third assigned error finds its refutation in what has already been said about the state and sufficiency of the prosecution's evidence.

The lower court, however, erred in appreciating treachery as the qualifying circumstance. Treachery was not alleged in the information, but was proved at the trial; it should thus have been treated only as a generic aggravating circumstance.[53] The fact that appellant held the feet, and another the hands, of the victim, when Marlo Rodico fatally stabbed him once in the abdomen, establishes that the victim was rendered defenseless and helpless, thereby allowing the assailants to commit the crime without risk to themselves arising from whatever defense the victim might make.[54]

The information alleges the qualifying circumstance of abuse of superior strength the existence of which has been adequately established by the prosecution. At the time of the attack, the victim was unarmed; the three assailants acted in manifest abuse of superior strength when, as repeatedly stated, acting in concert, two of them pinned their victim's feet and hands to the ground keeping him helpless while the third, did him in with a knife,

The trial court correctly disregarded appellant's claim to the mitigating circumstance of voluntary surrender, given that it took him almost eight (8) months after the issuance of the warrant of arrest against him before he presented himself to the police authorities, thus negating the spontaneity of such act.[55] For voluntary surrender to be appreciated as a mitigating circumstance, the same must be spontaneous, showing intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture.[56]

Considering that appellant, as one of the conspirators, was found guilty beyond reasonable doubt of the crime of murder without any mitigating circumstance, the court a quo did not err in imposing upon him the penalty of reclusion perpetua.

WHEREFORE, the assailed decision of the court a quo dated May 15, 1992 is hereby AFFIRMED in toto.

SO ORDERED.

Regalado, Puno, Mendoza, and Francisco, JJ., concur.

[1] Records, Vol. 1, pp. 1-2

[2] Records, Vol. 1, pp. 36, 84; Marlo was arraigned on June 18, 1991, Victorio, on Sept. 10, 1991, after his arrest on Aug. 22, 1991.

[3] Decision, p. 24; Rollo, p. 89

[4] TSN, November 4, 1991, p. 3-6

[5] TSN, July 16, 1991, pp. 5-8

[6] Records, Vol 1., p. 14.

[7] TSN July 16, 1991, p. 19.

[8] TSN, July 16, 1991, pp. 10 & 19.

[9] TSN, July 16, 1991, p. 11

[10] TSN, July 23, 1991, pp. 4-13

[11] TSN, July 23, 1991, pp. 12, 32)

[12] TSN, July 23, 1991, p. 16

[13] TSN, July 23, 1991, pp. 11, 34

[14] TSN, August 21, 1991, pp. 12-14

[15] TSN, August 21, 1991, p. 14

[16] TSN, August 21, 1991, pp. 15, 22

[17] TSN, August 21, 1991, p. 21

[18] TSN August 21, 1991, p. 10

[19] TSN, August 21, 1991, pp. 4-6

[20] TSN, September 10, 1991, p. 4

[21] TSN, September 10, 1991, p. 5

[22] TSN, September 10, 1991, p. 7

[23] SEE footnote 2, supra

[24] TSN, October 7, 1991, p. 3

[25] TSN, October 7, 1991, p. 3

[26] TSN, October 21, 1991, p. 12

- [27] TSN, October 21, 1991. p. 12
- [28] TSN, January 23, 1992, p. 4
- [29] TSN, January 23, 1992, p. 6
- [30] TSN, January 23, 1992, pp. 7-8
- [31] TSN, February 4, 1992, pp. 4-6
- [32] TSN, February 4, 1992, pp. 6-7
- [33] TSN, February 4, 1992, p. 7
- [34] TSN, February 4, 1992, pp. 7-8
- [35] TSN, February 4, 1992, pp. 9-12
- [36] TSN, February 4, 1992, p. 13
- [37] TSN, February 4, 1992, pp. 13-14
- [38] TSN, February 4, 1992, p. 18
- [39] TSN, February 4, 1992, p. 20
- [40] Appellants Brief, pp. 8-10
- [41] TSN, October 7, 1991, p. 3; TSN, October 21, 1991, p. 3
- [42] See supra
- [43] People vs. Yambao, 193 SCRA 571 [1991]; People vs. Andasa, 206 SCRA 636 [1992]; People vs. Arce, 227 SCRA 406 [1993]
- [44] RTC Decision, p. 15, Rollo, p. 40
- [45] People vs. Santos, 183 SCRA 25 [1990]
- [46] See People vs. Reyes, 103 SCRA 103 [1981]; People vs. Tayapad, 129 SCRA 353 [1984]; People vs. Traya, 147 SCRA 381 [1987]; People vs. Cabodac, 208 SCRA 787 [1992]
- [47] People vs. Mesias, 199 SCRA 20 [1991] citing People vs. Alambra and Garcia, 55 Phil. 578; Collado vs. Intermediate Appellate Court. 206 SCRA 206 [1992] citing People vs. Pedrosa, 169 SCRA 546 [1989]
- [48] People vs. Gabatin, 203 SCRA 225 [1991]; People vs. Competente; 207 SCRA 591 [1992]; People vs. Bolado, 226 SCRA 800 [1993]
- [49] Second Paragraph, Article 6, Revised Penal Code
- [50] People vs. Talay, 101 SCRA 332 [1980]; People vs. Penones, 200 SCRA 624 [1991]
- [51] People vs. Tala, 141 SCRA 240 [1986]; People vs. Bragaes, 203 SCRA 555 [1991]; People vs. Mendoza, 204 SCRA 288 [1991]; People vs. Simbulan, 214 SCRA 537 [1992]; People vs. Wenceslao, 212 SCRA 560 [1992]; People vs. Tapic, 220 SCRA 190 [1993]; People vs. Empacis, 222 SCRA 93 [1993]
- [52] People vs. Punzalan, 203 SCRA 365 [1991]; People vs. Villanueva, 211 SCRA 403 [1992]; People vs. Magalang, 217 SCRA 571 [1993]

[53] People vs. Buka, 205 SCRA 567 [1992]

[54] People vs. Bakang, 26 SCRA 840 [1969]; People vs. Ong, 62 SCRA 174 [1975]

[55] See People vs. Dela Cruz, 36 SCRA 532 [1970]; People vs. Mabugo, 63 SCRA 532 [1975]; People vs. Pagsanjan, 221 SCRA 735 [1993]

[56] People vs. Lingatong, 181 SCRA 424 [1990]; People vs. Ablao, 183 SCRA 658 [1990]; People vs. Tismo, 204 SCRA 535 [1991]; People vs. Devaras, 205 SCRA 676 [1992]

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